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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,427	07/23/2003	Albert Kreh	21295.62(H5650US)	9190
29127	7590	07/14/2004	EXAMINER	
HOUSTON ELISEEVA 4 MILITIA DRIVE, SUITE 4 LEXINGTON, MA 02421			PYO, KEVIN K	
			ART UNIT	PAPER NUMBER
			2878	

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/625,427

Applicant(s)

KREH, ALBERT

Examiner

Kevin Pyo

Art Unit

2878

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-12 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/23/03</u> . | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4 and 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neumann et al (4,595,829).

Regarding claim 1, Neumann et al shows in Fig.1 the following elements of applicant's invention: a) an objective (2) that defines an image beam path which is perpendicular to a surface of a specimen (1); b) an illumination beam path that encompasses a light source (6) for illumination of the specimen; c) a light source (LD) for generating a measurement light bundle for determining a focus position; d) an optical means (18) for splitting the measurement light bundle in such a way that an eccentrically extending measurement light beam bundle is created (col.5, lines 17-22), the optical means directs onto a detector element (D1, D2) a measurement light beam bundle remitted from the microscope-based system; e) a first dichroic beam splitter (T1) is provided in the image beam path of the microscope-based system, which couples the measurement light beam bundle eccentrically into the microscope-based system and directs it onto the specimen; and f) a lens (21) between the detector element and the optical means. Although Neumann does not specifically mention the use of a cylindrical lens, the specific lens utilized would have been obvious to one of ordinary skill in the art in view of design requirements and the desired performance.

Regarding claim 2, the limitation therein is disclosed in col.5, lines 9-32.

Art Unit: 2878

Regarding claims 3 and 4, the limitations therein are shown in Fig. 4.

Regarding claim 7, the limitation therein is shown in Fig. 1.

Regarding claim 8, the limitation therein is disclosed in col. 8, lines 64-67.

Regarding claim 9, the limitation therein is disclosed in col. 4 lines 50-58.

Regarding claims 10 and 11, Neumann et al discloses in col. 4, lines 4-7 a laser light source emits IR light.

Regarding claim 12, Neumann et al discloses in col. 7, lines 5-8 the use of a microprocessor for focus control. It would have been obvious to one of ordinary skill in the art to utilize a computer in Neumann et al in view of the desire to perform the more sophisticated signal processing.

Allowable Subject Matter

3. Claims 5 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. The following is a statement of reasons for the indication of allowable subject matter:

The prior art fails to disclose or make obvious an autofocus module for a microscope-based system comprising, in addition to the other recited features of the claim, the details and function of displacement means as claimed.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lehureau et al (4,079,248) is cited for disclosing an optical focusing sensor.

Art Unit: 2878

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Pyo whose telephone number is (571) 272-2445. The examiner can normally be reached on Mon-Fri (with flexible hour), First Mon. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David P. Porta can be reached on (571) 272-2444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin Pyo
Primary Examiner
Art Unit 2878

Pkk
7/11/